IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.876 OF 1986

Dena Bank ....Plaintiff
V/s.
Parekh Timber Trading Co. & Ors. ....Defendants

Mr.K.D. Shukla i/b K.D. Shukla & Co. for the Plaintiff.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 31ST AUGUST, 2006.

P.C. :

1. The suit is filed to recover a sum of Rs.5,93,529=81 ps. together with interest.

2. The claim arise in respect of the amounts due under the cash credit (hypothecation) facility granted by the Plaintiff to Defendant No.1 upto the limit of Rs.3,00,000/-. To secure the repayment thereof, the Plaintiff executed usual documents namely demand promissory note, letter of continuity and agreement of hypothecation. The prayer for enforcement of the charge by way of hypothecation is not pressed.

3. The said facility was renewed and in respect of the renewal also similar documents were executed. Despite repeated requests, Defendant No.1 failed and neglected to pay the said amount. Original Defendant

No.2 and Defendant Nos.3 and 4 were the partners of Defendant No.1. Defendant No.2-A is the heir of Defendant No.2.

4. The Plaintiff has filed an affidavit in lieu of examination-in-chief of one Pradip U. Dethe.

5. In the written statement filed by Defendant Nos.1, 2 and 3, it is alleged that the entire amount has been paid. The fact of the facility being granted as well as the fact of the disbursement of the amounts thereunder has not been denied. The contention is based on the allegation that the Defendants called upon the Plaintiff to adjust certain Samrudhi deposits against their claim. The Plaintiff however failed to do so. The Plaintiff however has contended that it has given credit for the amounts so adjusted. The Defendants have failed to appear or to prove the allegations regarding the payment.

6. In the correspondence tendered in Court also, the Defendants have admitted and acknowledged their liability.

7. In the circumstances, the following issues were framed by an order dated 24.2.2006 which read as

under :-

ISSUES

1) Whether the Plaintiffs in or about August, 1977 at the request of the Defendants extended to the them in the name of their Partnership Firm namely Defendant No.1 Cash Credit (Hypothecation) facility with a limit upto Rs.3,00,000/- on the Defendants executing documents as more particularly set out in paragraph 3 of the Plaint ?

2) Whether at the request of the Defendants the aforesaid facility was continued thereafter by their letter dated 19.3.1985 being Exhibit "E" to the Plaint ?

3) Whether as on 21.5.1985 a sum of Rs.5,93,529=81 remained due and payable by the Defendants to the Plaintiff under the aforesaid facility together with interest thereon @ 17.50% p.a. as per the particulars of claim annexed and marked Exhibit "H" to the Plaint ?

4) What reliefs the Plaintiffs are entitled

to ?

5) And generally ?

8. The fact of the facility is not denied. That the Plaintiff advanced the payment under the said facility is not denied. In the circumstances, issue No.1 is answered in the affirmative. The Plaintiff has also contended that the facility was continued. A letter dated 19.3.1985 itself establishes the same. Further the evidence of the Plaintiff's witness also establishes the same.

9. The Defendants have not led any evidence.

10. As stated above the Defendants have not seriously disputed the facility and disbursement of amounts pursuant thereof. Their only contention was that they had repaid the said amount. They have not established that there was no adjustment of the said deposits as contended by the Plaintiff. The Plaintiff has given credit for the said deposit in its accounts. The documents on record also contain an acknowledgement of the Defendants liability. In the circumstances, issue No.3 is answered in the affirmative.

11. Regarding issue No.4, the suit is decreed in terms of prayer (a).

Refund as per rules.